

Amit Toppo Vs. None

Amit Toppo Vs. None

SooperKanoon Citation : sooperkanoon.com/952531

Court : Orissa

Decided On : Dec-12-2011

Judge : The Honourable Mr. Justicer M.M. Das

Appeal No. : F.A.O. No. 184 of 2011

Appellant : Amit Toppo

Respondent : None

Judgement :

M.M. Das, J.

1. The appellant as petitioner filed an application before the learned Civil Judge (Sr. Division), Rourkela under sections 52 and 53 of the Mental Health Act, 1987 praying to be appointed as guardian of the person and property of one Deepak Toppo. By order dated 18.1.2011, the learned Civil Judge dismissed the said application, which was registered as Guardian Misc. Case No. 59 of 2007.

2. The appellant's case before the learned court below was that said Deepak Toppo is a mentally ill person being a Christian male aged about 29 years who was born on 7.3.1982. His father and mother are both dead and since the death of his parents, the said Deepak Toppo is being maintained under the care and custody of the appellant, who is the son of Deepak's maternal aunt, i.e., mother's sister. He has no other suitable person other than the appellant to look after him for which the appellant prayed to be appointed as guardian in respect of his

property both moveable and immovable as well as his person. A proclamation was made by the learned Civil Judge inviting objections, if any, in the said Guardian Misc. Case No. 59 of 2007. The said Misc. Case was once dismissed on 30.6.2008 against which the appellant approached this Court in FAO No. 539 of 2008. This Court by order dated 8.7.2010 passed in the said FAO, considering the submissions made by the learned counsel for the appellant and without expressing any opinion on the merits of the case, set aside the impugned order and remitted the matter back to the trial court for fresh disposal after giving opportunity of hearing to the parties. This Court further observed that it is open for the appellant to adduce further evidence in support of his claim, which shall be considered by the trial court on its own merit and in accordance with law.

3. After remand, the learned Civil Judge again heard the matter by affording an opportunity of hearing to the appellant. The learned trial court in the impugned order on analyzing the facts of the case came to the conclusion that provision of section 7 of the Guardian and Wards Act, 1890 which speaks of appointment of guardian for the welfare of the minor cannot be made applicable to the facts of the case as the said Deepak Toppo is a major. Thereafter, the learned Civil Judge referred to sections 52 and 53 of the Mental Health Act, 1987 and more specifically referring to the definition of a “mentally ill” person as defined in section 2 (1) of the said Act, came to the following conclusion:-

“.....It is clearly mentioned in section 2 (1) of Mental Health Act that a mental ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation. So, the provision laid down u/s 52 and 53 of Mental Health Act, 1987 is not applicable in case of mentally retarded person. With the aforesaid reasons I am of the view that Dipak Toppo being a major is not covered u/s 7 of the Guardians and Wards Act, 1890 and so also in view of the above discussion the provision laid down u/s 52 and 53 of Mental Health Act, 1987 is not applicable to him. So the petition filed by the petitioner is not maintainable and for which I am not inclined to issue a guardian certificate in favour of the petitioner in respect of the person and property of Dipak Toppo”.

4. The learned court below, as a matter of fact, has found that said Deepak Toppo as per the medical certificate marked as Ext. 11 is a mentally retarded person and the retardation is of permanent nature.

5. Learned counsel for the appellant strenuously urged that the learned court below are wrong in holding that the Mental Health Act, 1987 is not applicable to the facts of this case. Learned counsel, however, does not dispute that said Deepak Toppo is a mentally retarded person and such retardation is of permanent nature.

6. Under the Mental Health Act, 1987, a mentally ill person has been defined as a person who is in need of treatment by reason of any mental disorder other than mental retardation. By section 98 of the Mental Health Act, 1987, the Indian Lunacy Act, 1912 was repealed. In the said Indian Lunacy Act, a “Lunatic” was defined as a person who is an idiot or a person of unsound mind as per section 3 (5) thereof. Hence, the Indian Lunacy Act, 1912 included a person suffering from unsound mind and person with an unsound mind would in common parlance include a person suffering from mental retardation. However, in the repealing Act, i.e., Mental Health Act, though person with mental disorder was covered within the definition of mentally ill person, but person with mental retardation has been specifically excluded from the said definition. (emphasis supplied)

7. As a matter of fact, in case of a person with mental retardation, the provisions of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred to as ‘the Act, 1999’) will govern. In the said Act, section 2 (g) defines “mental retardation” to mean a condition of arrested or incomplete development of mind of person, which is specially characterized by sub-normality of intelligence. Further, under Chapter - II of the said Act, a body is constituted by the Central Government by notification, known as “National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability” having perpetual succession and a common seal, with the objects as mentioned in Chapter-III of the said Act. The Board of Trustees are to exercise powers and duties as envisaged in Chapter-IV thereof. The Local Level Committees are constituted by the Board for such area as

may be specified by it from time to time, as provided in Chapter-VI of the said Act, which also provides for a parent of a person with disability or his relative to make application to the said Local Level Committee for appointment of any person of his choice to act as guardian of the person with disability. Procedure for disposal of such application is also provided in the said Chapter-VI.

8. In view of the aforesaid Act, since, it is clear that the learned Civil Judge (Sr. Division) was right in holding that the appellant could not have approached under the Mental Health Act, 1987 or the Guardian and Wards Act, 1890 for being appointed as Guardian of the said Deepak Toppo, while dismissing this appeal, this Court grants liberty to the appellant to file appropriate application under the aforesaid Act, 1999.

9. The FAO is accordingly dismissed. Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com